

COUNTY COUNCIL
OF
HARFORD COUNTY, MARYLAND

BILL NO. 09-13Introduced by Council President Boniface at the request of the County ExecutiveLegislative Day No. 09-9 Date March 17, 2009

AN ACT to provide the County Executive, or his designee, with the authorization to execute, on behalf of Harford County, Maryland, an Agreement of Sale with Jerry C. Preston to purchase two parcels, known as 3889 and 3901 Norrisville Road, Jarrettsville, Maryland 21084, containing approximately 27.99 acres, more or less, with all improvements located thereon, and containing two development rights on the first-described parcel, for the purchase price of \$1,360,000 to be paid in multi-year payments; to pay interest on the outstanding balance as specified in the Agreement of Sale; and providing for and determining various matters in connection therewith.

By the Council, March 17, 2009

Introduced, read first time, ordered posted and public hearing scheduled

on: April 21, 2009at: 7:00 P.M.By Order: Barbara J. O'Connor, Council Administrator**PUBLIC HEARING**

Having been posted and notice of time and place of hearing and title of Bill having been published according to the Charter, a public hearing was held on April 21, 2009 and concluded on April 21, 2009.

Barbara J. O'Connor, Council Administrator

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW. [Brackets] indicate matter deleted from existing law. Underlining indicates language added to Bill by amendment. Language lined through indicates matter stricken out of Bill by amendment.

1 **WHEREAS**, the County Executive proposes that Harford County, Maryland enter into an
2 Agreement of Sale with Jerry C. Preston, which is attached hereto, to enable the County to acquire
3 real property and improvements known as 3889 and 3901 Norrisville Road, Jarrettsville, Maryland
4 21084, containing approximately 27.99 acres, more or less, and containing two development rights
5 on the first parcel, (the "Property") for \$1,360,000, of which \$50,000 will be paid at settlement and
6 the remaining balance to be paid as follows: \$100,000 on the first anniversary date of settlement;
7 \$400,000 on the second and third anniversary dates of settlement; and the final payment of \$410,000
8 on the fourth anniversary date of settlement; and that he, or his designee, be given the authority to
9 execute such agreement on behalf of Harford County, Maryland; and

10 **WHEREAS**, the purchase price for the Property is \$1,360,000, and interest shall be at the
11 rate of three and one-half percent (3.5%) per annum; and

12 **WHEREAS**, the Property, which is located on Maryland Route 23, is being acquired for the
13 purpose of the future construction of an indoor recreational facility; and

14 **WHEREAS**, Sections 520 and 524 of the Charter of Harford County, Maryland require that
15 all agreements and payments thereunder which would extend beyond the current fiscal year be
16 authorized by legislative act.

17 **NOW, THEREFORE,**

18 Section 1. Be It Enacted By The County Council of Harford County, Maryland that the County
19 Executive, or his designee, be, and is hereby, authorized to execute, on behalf of the County, the
20 Agreement of Sale with Jerry C. Preston providing for payment by Harford County, Maryland of
21 \$1,360,000 to be paid in multi-year installments: \$50,000 at settlement; \$100,000 on the first
22 anniversary date of settlement; \$400,000 on the second and third anniversary dates of settlement; and
23 the final payment of \$410,000 on the fourth anniversary date of settlement; at an interest rate of three

1 and one-half percent (3.5%) per annum.

2 Section 2. And Be It Further Enacted that this Act shall take effect 60 calendar days from the

3 date it becomes law.

EFFECTIVE: June 22, 2009

*The Council Administrator does hereby certify that
fifteen (15) copies of this Bill are immediately available for
distribution to the public and the press.*

Barbara J. O'Connor

Council Administrator

HARFORD COUNTY BILL NO. 09-13

Brief Title Installment Purchase – 3889 and 3901 Norrisville Rd

is herewith submitted to the County Council of Harford County for enrollment as being the text as finally passed.

CERTIFIED TRUE AND CORRECT

Barbara J. O'Connor/mkh
Council Administrator

Date April 21, 2009

ENROLLED

William Bonifant
Council President

Date April 21, 2009

BY THE COUNCIL

Read the third time.

Passed: LSD 09-12

Failed of Passage: _____

By Order

Barbara J. O'Connor/mkh
Council Administrator

Sealed with the County Seal and presented to the County Executive for approval this 22nd day of April, 2009 at 3:00 p.m.

Barbara J. O'Connor/mkh
Council Administrator



BY THE EXECUTIVE

David R. Craig
COUNTY EXECUTIVE

APPROVED: Date April 23, 2009

BY THE COUNCIL

This Bill No. 09-13 having been approved by the Executive and returned to the Council, becomes law on April 23, 2009.

EFFECTIVE DATE: June 22, 2009

Barbara J. O'Connor
Barbara J. O'Connor,
Council Administrator

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HARFORD COUNTY, MARYLAND

220 South Main Street
Bel Air, Maryland 21014

THIS AGREEMENT OF SALE ("Agreement"), made and executed in duplicate, this _____ day of _____, 2009, by and between, **JERRY C. PRESTON**, of the State of Maryland, sometimes hereinafter referred to as "Seller"; and **HARFORD COUNTY, MARYLAND**, a body corporate and politic of the State of Maryland, sometimes hereinafter referred to as "Buyer".

WITNESSETH, that the Seller does hereby bargain and sell unto the Buyer, and the Buyer does hereby purchase from the Seller all of those two parcels of land situate, lying and being in the Fourth Election District of Harford County, Maryland, located on Maryland Route 23, Norrisville Road in Jarrettsville, Maryland 21084, the first of which is described in and conveyed to Seller by a Deed dated December 17, 1998 and recorded among the Land Records of Harford County in Liber C.G.H. No. 2907, folio 605, and being further described as laid out and shown on the Survey Plat of the Land of Charles L. Swift, Jr. and William T. Swift, dated February 5, 1989, prepared by K.L.S. Consultants, Inc., and recorded among the said Land Records in Liber C.G.H. No. 1558, folio 373, being also Parcel 248 on State Tax Map 31, Tax Account Identifier No. 04-085787, containing 25.98 acres of land, more or less, the improvements thereon being known as 3889 Norrisville Road (known as 3889 Jarrettsville Road in the aforesaid title deed); and the second of which is described in and conveyed to Seller by a Deed dated November 17, 2005 and recorded among the aforesaid Land Records in Liber J.J.R. No. 6434, folio 602, being also Parcel 256 on State Tax Map 31, Tax Account Identifier No. 04-089170, containing 2.01 acres of land, more or less, the improvements thereon being known as 3901 Norrisville Road, (both parcels comprising the "Property"), together with the improvements thereon, and all the rights and appurtenances thereto, including two (2) development rights on the firstly described parcel above, alleys, ways, water privileges, and advantages thereto belonging or in anywise appertaining.

NOW THEREFORE, for and in consideration of the respective promises and the covenants as herein contained, and for other good and valuable consideration, the receipt and adequacy of all of which being hereby acknowledged, the parties intending to be legally bound, hereby promise, covenant and agree as follows:

1. The purchase price for the Property is **ONE MILLION THREE HUNDRED SIXTY THOUSAND DOLLARS (\$1,360,000.00)** and shall be paid by Buyer to Seller in the following manner: a check in the amount of **FIFTY THOUSAND DOLLARS (\$50,000.00)**, or other payment in that amount acceptable to the settlement officer and Seller at the time of settlement which shall take place on July 31, 2009, or sooner if agreed to in writing by both parties to this Agreement; the balance of the purchase price shall be paid annually in the following amounts and on the following dates:

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- on July 31, 2010 an installment payment in the amount of **ONE HUNDRED THOUSAND DOLLARS (\$100,000.00)**;
- on July 31, 2011 an installment payment in the amount of **FOUR HUNDRED THOUSAND DOLLARS (\$400,000.00)**;
- on July 31, 2012 an installment payment in the amount of **FOUR HUNDRED THOUSAND DOLLARS (\$400,000.00)**; and
- on July 31, 2013 the balance of the purchase price in the amount of **FOUR HUNDRED TEN THOUSAND DOLLARS (\$410,000.00)**,

together with simple interest thereon on the outstanding balance payable in each year at the rate of three and one-half per cent (3.5%), per annum by County checks payable to the Seller. Buyer reserves the privilege to prepay, at any time, without premium or fee, the entire indebtedness or any part thereof. Said prepayment shall reduce the principal amount owed and offset the amount due and payable on the final installment or balance of the purchase price. Said balance of the purchase price unpaid at closing shall be evidenced and secured by a Promissory Note in the principal amount of **ONE MILLION THREE HUNDRED TEN THOUSAND DOLLARS (\$1,310,000)** bearing simple interest thereon at the rate as hereinbefore provided. A copy of the form of the Note is attached hereto as "EXHIBIT-A". The terms and provisions of this paragraph shall survive closing. Said settlement shall be held in the Harford County Procurement Department Conference Room, at 220 South Main Street, (third floor), Bel Air, Maryland 21014, or at such other place in Maryland as shall be mutually agreeable to the Seller and Buyer. **It is agreed between the parties hereto, that this Agreement is subject to approval by the Harford County Council by no later than May 29, 2009; and by the Harford County Board of Estimates at its regularly scheduled Board meeting; and acceptance by Harford County, Maryland. In the event that either the Harford County Council or the Harford County Board of Estimates does not approve this Agreement, it shall become null and void.**

2. This Agreement is contingent upon the Buyer receiving approval from the State of Maryland for funding of this purchase by the State Board of Public Works through Program Open Space Funding. If for any reason this contingency is not satisfied by May 6, 2009, then Buyer may elect to terminate this Agreement and make it null and void.

3. Except as otherwise specified in this agreement, it is further understood and agreed between the parties hereto that the Buyer is purchasing the Property "AS IS" without any representations or warranties, including but not limited to the existing residential and agricultural improvements. **BUYER IS ADVISED OF THE RIGHT TO RECEIVE A "DISCLOSURE/DISCLAIMER" STATEMENT FROM SELLER (SECTION 10-702 REAL PROPERTY ARTICLE, ANNOTATED CODE OF MARYLAND)**

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4. The deed to any tract of land purchased under a State grant from Program Open Space (POS) shall contain a clause setting forth the following restrictions on its use. It is understood and agreed that the land acquired under a State Grant from Program Open Space may not be converted to any use other than public outdoor recreation and open space use without the prior written approval of the Secretary of Natural Resources and the Secretary of the Department of Budget and Management and the Secretary of the Maryland Department of Planning. Any conversion in land use may be approved only after the local governing body replaces the land with land of at least equivalent area and of equal recreation or open space value. In order for any conversion of land acquired or developed under a State Grant from Program Open Space to occur, the appraised monetary value of land proposed for acquisition shall be equal to or greater than the appraised monetary value of the land to be converted. The Secretaries of Natural Resources, Planning, and Budget and Management, in their sole discretion, shall determine the relative recreation and open space value of the properties, considering the fair market value, usefulness, quality and location of the properties and/or facilities. This clause shall be included in the deed conveying the Property to the Buyer.

5. And upon payment of the purchase price, a fee simple deed for the Property containing covenants of special warranty and further assurances shall be executed at the Buyer's expense by the Seller, which shall convey the Property by good and merchantable title to the Buyer, free of liens and encumbrances; but subject to use and occupancy restrictions of public record that are generally applicable to properties in the immediate neighborhood or the subdivision in which the property is located, publicly recorded easements for public utilities and any other easements that may be observed by an inspection of the Property. In the event Seller is unable to give good and merchantable title or such as can be insured by a Maryland Licensed title insurer, with Buyer paying no more than the standard rate as filed with the Maryland Insurance Commissioner, Seller, at Seller's expense shall have the option of curing any defect so as to enable Seller to give good and merchantable title or, if Buyer is willing to accept title without said defect being cured, paying any special premium on behalf of Buyer to obtain title insurance on the Property to the benefit of Buyer. If Seller is unwilling or unable to cure such title defect(s) and is unwilling or unable to obtain a policy of title insurance on the Property to the benefit of Buyer from a Maryland licensed title insurer, Buyer shall have the option of taking such title as Seller can give, or terminating this contract and being reimbursed by Seller for the cost of searching title as may have been incurred. In the latter event, there shall be no further liability or obligation on either of the parties hereto and this Contract shall be become null and void.

6. Seller authorizes Buyer, its employees, agents or contractors to enter the Property, after reasonable notice, to perform an environmental audit ("Audit"). The Audit, which shall be performed by a qualified environmental consultant, shall be for the purpose of detecting hazardous substances and shall be conducted at Buyer's expense. Seller agrees to cooperate reasonably with the Audit by providing access to the Property and inspection of all documents regarding the Property and compliance with the Environmental Protection Agency or State environmental standards. Also, Buyer may

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conduct ground water and soil sampling of the Property after reasonable notice. Upon completion of the testing, if any, Buyer agrees to restore the area disturbed by testing to its original condition. A copy of the Audit shall be made available to the Seller, if so requested. The provisions of this Section 6 shall survive closing or any termination of this Agreement prior to closing.

7. The term "Hazardous Substances", as used in this Agreement shall mean pollutants, contaminants, toxic or hazardous wastes, or any other substances, the removal of which is required or the use of which is restricted, prohibited or penalized by any "Environmental Law", which term shall mean any federal, State or local law or ordinance relating to pollution or protection of the environment. Seller hereby agrees that (i) after the date of this Agreement, no activity will be conducted on the premises by Seller, or to Seller's knowledge, by any other person, that will produce any Hazardous Substance; (ii) the premises will not be used in any manner for the storage of any Hazardous Substances by Seller, or to Seller's knowledge, by any other person; (iii) no portion of the premises will be used as a landfill or a dump by Seller, or to Seller's knowledge, by any other person; (iv) Seller will not install any underground tanks of any type; and (v) Seller will not knowingly allow any surface or subsurface conditions to exist or come into existence that constitute, or with the passage of time may constitute, a public or private nuisance.

8. If such Audit, inspection, or testing reveals any condition on the Property that is unsatisfactory to Buyer in its sole and exclusive determination, Buyer shall give notice to Seller on or before fifteen (15) days from the date of the inspection. Seller, at Seller's option, may remedy such condition within twenty (20) days.

9. On Seller's failure to take remedial action as aforesaid, Buyer, at its sole option, may either extend this Agreement of Sale for a reasonable period of time, to be determined by Buyer, to allow Seller to remedy such hazardous situation, waive such defects and proceed to closing under this agreement, or terminate and rescind the Agreement.

10. At all times prior to Closing, including times following the "**Inspection Period**" (which Inspection Period is defined to be the period commencing with the Effective Date and continuing through and including July 31, 2009, Buyer and Buyer's employees, third party consultants, lenders, engineers, accountants and attorneys (collectively, the "**Buyer's Representatives**") shall be entitled to conduct a "**Basic Project Inspection**" of the Property, which will include the rights to enter upon the Land and Improvements, at reasonable times, to perform inspections and tests of the Land, including the Audit described in Section 6 hereof, and the Improvements, and the compliance by the Land and the Improvements with all applicable laws, ordinances, rules and regulations. Buyer shall provide not less than one (1) business day's prior notice to Seller before conducting any investigations, study, interview or test to or at the Land and the Improvements. A copy of any and all written reports of said inspection(s) shall be made available to the Seller, if so requested. If Buyer determines that the results of any inspection, test, examination or review, including the Audit described in Section 6 hereof,

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do not meet Buyer's criteria, in its sole discretion, for the purchase, financing or operation of the Property in the manner contemplated by Buyer or for any other reason, then Buyer may terminate this Agreement by written notice to Seller (the "**Termination Notice**"), delivered not later than the last day of the Inspection Period (the "**Approval Date**"), whereupon neither party shall have any further liabilities or obligations hereunder, except for those liabilities and obligations that expressly survive a termination of this Agreement. If Buyer fails to timely deliver a Termination Notice to Seller prior to the Approval Date, Buyer shall be automatically deemed to have forever waived its right to terminate this Agreement. Buyer agrees to defend, indemnify and hold the Seller harmless for and against the acts of the Buyer and the Buyer's agents, invitees, and/or contractor's in connection with any entry upon the Property under this Section 10. The provisions of this Section 10 shall survive closing or the termination of this Agreement prior to closing.

11. The Property shall be held at the sole risk of Seller until legal title has passed to Buyer, and Seller assumes all loss or damage to the property until settlement. At the settlement, Seller shall deliver possession of the Property in substantially the same condition as existed on the date this Agreement is fully executed subject to the Post Settlement Occupancy Agreement signed by the parties attached as "EXHIBIT-B". So long as this Agreement is in full force and effect, Seller shall not cause or permit any new lien or encumbrance on the Property. Included in the purchase price are all permanently attached fixtures, including all smoke detectors. Excluded from the purchase price are the items marked as excluded on the attached Fixture Exclusion Form, attached hereto as "EXHIBIT-C".

12. Taxes and other public charges against the premises shall be apportioned as of the date of settlement, at which time possession shall be given; and the said parties hereto hereby bind themselves, their successors and assigns, for the faithful performance of this Agreement. Cost of all transfer taxes and recordation taxes required by law shall be the responsibility of the Buyer. Buyer acknowledges, if applicable, that it has been notified by Seller that the Property has been assessed for farm or agriculture use under the provisions of Section 8-209 of the Tax-Property Article of the Annotated Code of Maryland and that the Property being transferred may be subject to Agricultural Land Transfer Tax imposed by Sections 13-301 *et seq* of the Tax-Property Article of the Annotated Code of Maryland. Buyer shall pay any Agricultural Transfer Tax which may be payable with respect to the Property.

13. With respect to Lead-Based Paint Hazards: Section 1018, of the Residential Lead-Based Paint Hazard Reduction Act of 1992, requires the disclosure of certain information regarding lead-based paint hazards in connection with the sale or lease of residential real property. Unless, otherwise exempt, the Act applies only to houses constructed prior to 1978. A seller of pre-1978 housing is required to disclose to the buyer, based upon actual knowledge, all known lead-based paint hazards in the Property and provide the buyer with any available reports in the seller's possession relating to lead-based paint, or lead-based paint hazards applicable to the Property.

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14. Seller represents and warrants to the Buyer, intending that it rely upon such warranty and representation, that (a) _____ the improvements on the portion of the Property known as 3889 Norrisville Road were constructed prior to 1978; or _____ were not constructed prior to 1978; or _____ the date of construction is uncertain; and (b) _____ the improvements on the portion of the Property known as 3901 Norrisville Road were constructed prior to 1978; or _____ were not constructed prior to 1978; or _____ the date of construction is uncertain; or (c) _____ Seller and Buyer mutually agree that the requirements of the Act do not apply to the sale of the Property; and (d) _____ Buyer acknowledges that it understands the implications of possible existing lead-based paint on the Property based on the information provided in this section and will take no action toward the Seller regarding the removal of lead-based paint existing on the Property, if any.

15. Buyer and Seller are required and agree to make full settlement in accordance with the terms of this Agreement and acknowledge that failure to do so constitutes a breach hereof. If Seller fails to make full settlement or is in default due to Seller's failure to comply with the terms, covenants and conditions of this Agreement, Buyer shall be entitled to pursue such rights and remedies as may be available, at law or in equity, including, without limitation, an action for specific performance of this Agreement of Sale and/or monetary damages. If Buyer fails to make full settlement or is in default due to Buyer's failure to comply with the terms, covenants and conditions of this Agreement, Seller shall be entitled to pursue such rights and remedies as may be available, at law or in equity, including, without limitation, an action for specific performance of this Agreement of Sale and/or monetary damages.

16. Buyer warrants and represents to Seller and the Seller warrants and represents to the Buyer that they have not contracted with a broker, agent or finder who is or may be entitled to a commission on account of this agreement. Buyer and Seller agree to defend, indemnify and save each other harmless from any commission or fee which may be payable to any broker, agent or finder with whom the Buyer or Seller has dealt with in connection with this Agreement. The terms of this paragraph shall survive closing.

17. All notices and/or requests required pursuant to this Agreement shall be in writing and shall be deemed to have been properly delivered if sent by certified mail, postage prepaid and addressed as follows:

To Seller: Jerry C. Preston
 3889 Norrisville Road
 P.O. Box 300
 Jarrettsville, MD 21084

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To Buyer: Deborah L. Henderson, Director
Department of Procurement
Harford County, Maryland
220 South Main Street
Bel Air, Maryland 21014


With a copy to: Deborah S. Duvall
Senior Assistant County Attorney
220 South Main Street
Bel Air, Maryland 21014

18. This shall be the final and entire agreement between the parties hereto, and neither they nor their Agents shall be bound by any terms, conditions or representations not herein written. It is further agreed between the parties hereto that this Agreement may be executed in counterparts, each of which when considered together shall constitute the original Agreement. The parties hereto further agree that this Agreement offer shall be deemed validly executed and delivered by a party if a party executes this Agreement and delivers a copy of the executed Agreement to the other parties by electronic delivery by email, telefax, or telecopier transmittal. Buyer agrees to execute the donee acknowledgement portion of IRS form 8283.

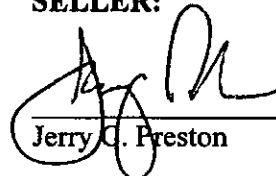
19. Time is of the essence of this Agreement.

WITNESS, in duplicate, the hands and seals of the parties hereto, the day and year first above written.

WITNESS/ATTEST:



SELLER:

 (SEAL)
Jerry C. Preston

BUYER:

HARFORD COUNTY,
MARYLAND

By: _____ (SEAL)

Deborah L. Henderson, Director
Department of Procurement/
Secretary, Board of Estimates

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Approved as to form and legal sufficiency, Reviewed and concur,
this _____ day of _____, 2009.

Deborah S. Duvall
Senior Assistant County Attorney

Joseph P. Pfaff, Director
Department of Parks & Recreation

Approved as to financial sufficiency, this _____ day of _____, 2009.

John R. Scotten, Jr, Treasurer